
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
American Radio Brokers, Inc.,)	File Number: EB-04-AN-028
d/b/a Radio Station KFFR 1020)	
San Francisco, California)	NAL/Acct. No: 200532780002
)	FRN: 0010287019
Registrant of Antenna Structure)	
ASR # 1019797)	
Knik, Alaska)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 10, 2004

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that American Radio Brokers, Inc., d/b/a/ Radio Station KFFR 1020 ("ARBInc"), San Francisco, California, registrant of Antenna Structure Number 1019797, located at Knik, Alaska, willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended, ("the Act"), and Sections 17.48(a) and 17.51(a) of the Commission's Rules ("the Rules").¹ Specifically, we find ARBInc apparently liable for failing to maintain the lighting requirements for the antenna structure, as prescribed by the Commission, and for failing to notify an office or flight service station of the FAA regarding light outages. We conclude, pursuant to Section 503(b) the Act,² that ARBInc is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000.00).

II. BACKGROUND

2. Antenna structure # 1019797 is located off Hazel Avenue near Knik, Alaska. ARBInc is the registered owner of this antenna structure. The antenna structure, designated as tower one of a two-tower transmitting array,³ is used by AM broadcast station KAXX, Eagle River, Alaska, and is also the supporting structure of the antenna for FM broadcast station KADX, Houston, Alaska.⁴ The antenna structure is required to have Obstruction Marking and Lighting in accordance with specified chapters of

¹47 U.S.C. § 303(q), 47 C.F.R. §§ 17.48(a) & 17.51(a).

²47 U.S.C. § 503(b).

³The second tower of this array is below 200 feet, passes slope requirements and therefore is not required to be a registered structure.

⁴According to Commission records, Chester P. Coleman is the licensee of both KAXX and KADX.

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FAA Advisory Circular 70/7460-1F.⁵ Specifically, the structure is required to be painted with the appropriate orange and white banding and lit with red obstruction lighting including a top mounted flashing red beacon.⁶

3. On October 15, 2002, the electric power utility, Matanuska Electric Association, Inc. (“MEA”), that serves the antenna structure # 1019797, alerted the Alaska Region FAA, Air Traffic Division, that the utility would terminate electric service to the site on October 16, 2002, due to non-payment of utility bills by ARBInc.⁷ Because this action would make the tower go dark and premise equipment non-functional, Air Traffic Division personnel requested a Notice to Airmen (“NOTAM”) issued, through the FAA’s Kenai Flight Service Station (“Kenai FSS”) as a preemptive measure concerning the antenna structure.⁸ The Air Traffic Division called and relayed the information they had obtained to a field agent of the Commission’s Anchorage Resident Agent Office. Later on October 15, 2002, Anchorage agents attempted to contact staff at the main studio location for radio stations, KAXX and KADX, which broadcast using the antenna structure. Agents located the suites in the building used by the radio stations but found that both suites were locked and unoccupied. The main studio telephone number for these stations was reported as out of service by the local telephone system.

4. The electric power to antenna structure # 1019797 was discontinued by MEA on October 16, 2002. On October 30, 2002, with an impending auto-cancellation of the original NOTAM for the structure, the FAA’s Kenai FSS contacted an Anchorage Office agent. The Anchorage agent revisited the antenna structure site on October 31, 2002, and confirmed no lights illuminated on the structure. The Kenai FSS then re-issued the NOTAM on the basis that no lighting was illuminated on the antenna structure. The Kenai FSS indicated that they had no record of the structure owner contacting them for NOTAM issuance or continuance.

5. On December 12, 2002, an Anchorage agent contacted Chester Coleman (“Coleman”), of American Radio Brokers, Inc., to inquire about the status of the antenna structure lighting. Coleman responded that he was working on it. In response to the question regarding the issuance and maintenance of NOTAM’s, Coleman stated that he did call the Palmer Flight Service Station and reported when the power was taken down. The Agent requested specifics about the contact with the Palmer FSS but Coleman indicated that he did not have the information immediately available and that he could forward the information later.⁹

⁵Pursuant to Section 17.23 of the Commission’s Rules, 47 C.F.R. § 17.23, antenna structures to be registered must conform with the Federal Aviation Administration’s (“FAA’s”) painting and light recommendation as set forth on the FAA Notice to the owner of the structure. The Notice contains the FAA’s determination of “no hazard,” as referenced in FAA Advisory Circulars: AC 70/7460-1J, “Obstruction Marking and Lighting,” effective January 1, 1996, and AC 150/5345-43E, “Specification for Obstruction Lighting Equipment,” dated October 19, 1995. These circulars are incorporated by reference in Section 17.23 of the Rules and “contain FAA recommendations for painting and lighting structures which pose a potential hazard to air navigation. For purposes of this part, the specifications, standards, and general requirements stated in these documents are mandatory.” 47 C.F.R. § 17.23.

⁶FAA Advisory Circular 70/7460-1F, Chapters Three, Four and Five.

⁷MEA refers to this site as the “KABN radio site.”

⁸A “NOTAM” advises pilots of an antenna structure at a specific location with a temporary light malfunction.

⁹The Anchorage Office has not yet received the requested information from Coleman.

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6. On December 12, 2002, an Anchorage agent contacted the FAA's Air Traffic Division to inquire about the possibility of obtaining records of NOTAM's from the Palmer FSS. The Air Traffic Division indicated that the Palmer FSS is not authorized to accept or issue NOTAM's and that the Palmer FSS advises all callers to contact Kenai FSS with their information. The FAA Air Traffic Division also indicated that none of the NOTAM's issued or maintained by the Kenai FSS for antenna structure # 1019797 were initiated by or on behalf of Coleman, ARBInc or its employees.

7. On December 16, 2002, FAA Air Traffic Division issued an Aeronautical Advisory Study, 2002-AAL-279-OE, DETERMINATION OF HAZARD TO AIR NAVIGATION ("FAA Notice"), for the specified structure based on the on-going unlighted condition of the structure. This FAA Notice was addressed and sent to Chester P. Coleman, American Radio Brokers, Inc., 1255 Post Street, Suite 1011, San Francisco, CA, 94109. Coleman was required to respond by January 15, 2003. The FAA received no response from ARBInc, Coleman, or their representatives. Consequently, on January 25, 2003, the determination contained in the FAA Notice became final.¹⁰ The FAA Notice warned that the FAA's determination concerning the antenna structure did not relieve Coleman or ARBInc of "compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body."¹¹

8. Between October 31, 2002 and July 23, 2004, agents from the Anchorage Office continued to contact MEA and visit the antenna structure site.¹² Each contact with MEA revealed that ARBInc had made no effort to reestablish electric utility service to the antenna structure and that the structure remained disconnected from the utility's power grid.¹³ Each visit to the site revealed no illumination of the side marker or top beacon lighting. Agents noted no evidence of an alternate source of power (generator, wind or solar) at the site.

9. On July 23, 2004, an Anchorage Office agent again traveled to the antenna structure, inspected the site and found no evidence of any change to MEA's utility connection point and no indication on the meters that the premise equipment was consuming power. The visit to the site revealed no illumination of the side marker or top beacon lighting. In response to an Anchorage agent's inquiry, MEA indicated that MEA has had no contact with Coleman, ARBInc or representative and that no payments to the overdue account have been made. MEA advised the Anchorage agent that the site remained continuously disconnected from the utility's power grid since the disconnect action of October 16, 2002.

¹⁰On October 8, 2003 and December 10, 2003, an Anchorage office agent made contact with the FAA Air Traffic Division to verify that the FAA NOTAM was still in effect. Air Traffic personnel advised that the FAA NOTAM was still in effect and that no contact with ARBInc or Coleman had been advanced or received.

¹¹FAA Notice at 1.

¹²Anchorage Office agents visited the antenna structure on October 16, 2002, October 31, 2002, December 12, 2002, December 16, 2002, January 9, 2003, October 8, 2003, December 18, 2003, and July 23, 2004. On December 12, 2002, an agent found that MEA had "Red Tagged" and locked both power utility meter bases/panels. Neither of the utility meters were turning, indicating no power consumption from the premise equipment. On the December 18, 2003 visit, an agent noted that MEA had removed one of the two meters and placed a tamper-proof locking ring around the remaining meter with a new "Red Tag." The remaining meter showed no power consumption from the premise equipment. These conditions were still in existence at the agents' visit on July 23, 2004. The agents noted no evidence of an alternate source of power (generator, wind or solar) at the site during any of their visits.

¹³Anchorage Office agents contacted MEA on October 31, 2002, December 10, 2003 and July 22, 2004.

III. DISCUSSION

10. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) is interpreted to mean simply that the acts or omissions are committed knowingly.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

11. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹⁶ Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified.¹⁷ On October 16, 2002, the utility supplying electrical power to antenna structure #1019797 terminated service to the site, leaving the antenna structure dark and premise equipment non-functional. With no primary or alternate source of electricity, antenna structure #1019797 has not been illuminated with its required red obstruction lighting since October 16, 2002 through at least July 23, 2004, the date of the last inspection by the Anchorage FCC agent.

12. Section 17.48(a) of the Rules requires that tower registrants notify the FAA Flight Service Station or office of any extinguishment or malfunction of any required top mounted lighting or flashing light no matter the position on the structure.¹⁸ Because of the termination of electrical power on October 16, 2002, the lighting on antenna structure #1019797 has been extinguished since that date through at least July 23, 2004. However, ARBInc, the owner of the antenna structure, has never notified an FAA Flight Service Station concerning this outage. In addition, ARBInc failed to respond to inquiries from both the FAA and the FCC concerning the light outages on the antenna structure

13. ARBInc’s principle, Chester Coleman, was given notice of the extinguishment of the lights by a Commission agent. Coleman indicated to the agent that he knew of the outage and had notified the FAA of the outage, although no notification was ever given. Therefore, ARBInc’s failure to ensure the required obstruction lighting on antenna structure # 1019797, and to notify the FAA of the extinguishment of the lighting on the antenna structure, was willful.¹⁹ ARBInc’s failure to ensure the

¹⁴Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁶47 U.S.C. § 303(q).

¹⁷47 C.F.R. § 17.51(a).

¹⁸47 C.F.R. § 17.48(a).

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obstruction lighting, and to notify the FAA, occurred on more than one day, therefore, they were repeated. Based on the evidence before us, we find ARBInc willfully and repeatedly violated Section 303(q) of the Act and Sections 17.51(a) and 17.48(a) of the Rules by failing to maintain the required red obstruction lighting from sunset to sunrise and by failing to notify FAA regarding the on-going light outage on antenna structure 1019797 in Knik, Alaska as required.

14. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules,²⁰ the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000. The base amount for failing to file required information is \$3000. We find that failing to notify the FAA of an outage constitutes a failure to file required information. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$13,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Rules,²² American Radio Brokers, Inc. d/b/a Radio Station KFFR 1020 is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 303(q) of the Act and Sections 17.51(a) and 17.48(a) of the Rules by failing to maintain and exhibit red obstruction lighting from sunset to sunrise on antenna structure 1019797 in Knik, Alaska and making proper notification to the FAA regarding the top light outage.

16. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, American Radio Brokers, Inc., d/b/a Radio Station KFFR 1020, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

¹⁹The FAA Notice specifically warned ARBInc and Coleman that the FAA determination that the antenna structure was a hazard to air navigation did not relieve them of their compliance responsibilities relating to any Federal, State or local law.

²⁰12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹47 U.S.C. § 503(b)(2)(D).

²²47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

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18. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, Alaska 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²³

21. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to: American Radio Brokers, Inc., d/b/a Radio Station KFFR 1020, 1255 Post Street, Suite 625, San Francisco, CA 94109; Chester P. Coleman, C/O Amer. Radio Brokers, Inc., 1255 Post Street, Suite 1011, San Francisco, CA 94109; Chester P. Coleman, 1255 Post Street, Suite 1023, San Francisco, CA 94109.

FEDERAL COMMUNICATIONS COMMISSION

David J. Charlton
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²³See 47 C.F.R. § 1.1914